



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

Caleb P. Burns, Esq.  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

**JUL - 8 2016**

RE: MUR 6823  
Harry M. Walker

Dear Mr. Burns:

On May 22, 2014, the Federal Election Commission ("Commission") notified your client, Harry M. Walker ("Respondent"), of a complaint alleging that Respondent violated the Federal Election Campaign Act of 1971, as amended ("Act"). After reviewing the allegations in the complaint, your client's response, and publicly available information, the Commission, on June 27, 2016, found no reason to believe that Respondent violated 52 U.S.C. § 30118. Accordingly, the Commission closed its file in this matter as it pertains to Respondent. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

The Commission reminds Respondent that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify Respondent when the entire file has been closed.

If you have any questions, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", is written over a horizontal line.

Mark Shonkwiler  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 )  
4 RESPONDENT: )

MUR: 6823

5 )  
6 Harry M. Walker )  
7 )  
8 )

9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission by  
11 Tea Party Patriots Fund and its Chair, Jenny Beth Martin. *See* 52 U.S.C. § 30109(a)(1)  
12 (formerly 2 U.S.C. § 437g(a)(1)). The Complaint, as amended, alleges that Harry M. Walker, a  
13 regional president of Trustmark National Bank ("Trustmark"), consented to the making of a  
14 prohibited national bank contribution when Trustmark loaned \$250,150 to Mississippi  
15 Conservatives ("MC") without Trustmark having a secured interest in a certificate of deposit  
16 ("CD") worth approximately \$250,543 that a Trustmark depositor pledged as collateral for the  
17 loan. The Amended Complaint also alleges that Walker, acting on behalf of Trustmark, certified  
18 a portion of an MC disclosure report that inaccurately described the collateral for the loan.

19 We recommend that the Commission find no reason to believe that Walker consented to a  
20 prohibited contribution to MC because the totality of the circumstances indicates that Trustmark  
21 was assured of repayment when it made the loan. Additionally, we conclude that Walker's  
22 inaccurate certification does not constitute an independent violation of the Act or Commission  
23 regulations by Walker.

24 **II. BACKGROUND**

25 MC, which registered with the Commission on January 15, 2014, is an independent-  
26 expenditure-only committee supporting multiple candidates, including Sen. Thad Cochran  
27 (Miss.), who was a candidate in the June 3, 2014, Republican Senatorial primary. Brian Perry is

1 the treasurer of MC and its sole director. Through October 15, 2014, MC had raised  
2 \$3,357,903.00 and disbursed \$3,020,285.90. MC Pre-General Report at 2 (Oct. 23, 2014). MC  
3 engaged in less activity after the primary election; since July 1, 2014, MC disclosed receipts of  
4 \$390,250, disbursements of \$84,901.35, and cash on hand of \$337,617.10. *Id.*; Oct. Quarterly  
5 Rpt. at 2 (Oct. 15, 2014).

6 Trustmark National Bank ("Trustmark") is a nationally-chartered bank headquartered in  
7 Jackson, Mississippi, and is MC's depository. MC Statement of Organization at 4 (Jan. 14,  
8 2014). Harry M. Walker is Trustmark's Regional President of Central Mississippi. Walker Aff.  
9 ¶¶ 1-2.

10 **A. Trustmark Loans \$250,150 to MC and Takes a Security Interest in an**  
11 **Undisclosed Person's CD as Collateral**  
12

13 The available information establishes that on September 3, 2013, Trustmark created a  
14 \$250,000 CD with a nine-month term for an unidentified customer. Sometime before January  
15 29, 2014, MC asked this unidentified customer to provide collateral for a loan from Trustmark to  
16 MC. Further, Walker received a request — from a person he did not identify — for Trustmark to  
17 loan \$250,000 to MC to be secured by the undisclosed depositor's CD, which by that time was  
18 worth \$250,543.74. Walker Aff. ¶ 7. Walker directed Jeremy Bond, a Vice President and  
19 Branch Manager at Trustmark's Jackson, Mississippi, main office, to prepare the loan paperwork  
20 and process the loan. *Id.* ¶ 7, 8. Walker dictated the terms of the loan to Bond, including the  
21 interest rate, amount, and maturity date.

22 In addition to the loan documents to be signed by MC, the loan paperwork included an  
23 Assignment of Deposit Account ("Assignment"), by which the unknown person would pledge  
24 the CD as collateral for Trustmark's loan to MC. The Assignment provides that it grants

1 Trustmark "a security interest" in the CD "to secure" MC's debt to Trustmark, and describes  
2 Trustmark as a secured creditor under Mississippi law.<sup>1</sup>

3 On January 29, 2014, MC's Brian Perry met with Bond to execute the loan documents,  
4 and Trustmark disbursed \$250,000 to MC.<sup>2</sup> MC used the loan funds for a \$219,540 independent  
5 expenditure it made two days later for communications opposing candidate Chris McDaniel, Sen.  
6 Cochran's opponent in the primary. Compl. at 4; MC Independent Expenditure Rpt. (January 31,  
7 2014) (disclosing that an expenditure was made or obligation incurred on January 31, 2014, for  
8 communications opposing McDaniel); MC Amended Apr. Quarterly Rpt. at 17 (May 17, 2014)  
9 (describing MC's receipt of \$250,150 in loan funds from Trustmark as "IE Loan"); *id.* at 2, 6, 11,  
10 13 (May 17, 2014) (disclosing no cash on hand at the start of the reporting period and the receipt  
11 of a total of four itemized contributions before January 31, 2014, totaling \$160,000).

12 Trustmark, however, did not receive the signed Assignment from the CD's owner until  
13 February 5—one week *after* it had disbursed the loan proceeds to MC.<sup>3</sup> The available  
14 information indicates that it is not unusual for a bank to close on a loan without the complete set  
15 of signed loan documentation when, as here, there is an existing banking relationship with the

<sup>1</sup> Under the Assignment, Trustmark had the power to take all funds in the CD and apply them to the loan if MC defaulted. The Assignment also established that: Trustmark possessed the CD; in the event of MC's default on its loan, Trustmark could transfer title to all or part of the CD; the CD's owner, designated the "grantor", "irrevocably appoint[ed] [Trustmark] as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor (and each of them if more than one) as shall be necessary or reasonable"; and Trustmark enjoyed the rights and remedies of a "secured creditor." The CD's owner was also prohibited from transferring or encumbering the CD.

<sup>2</sup> The Promissory Note, dated January 29 and signed by Perry, specifies that the loan principal was \$250,150, it had a maturity date of June 3, 2014, and the annualized interest rate was 2.650%. The Boarding Data Sheet indicates that the loan had a 2.864 % interest rate. Bond explained that the two rates were calculated using different formulas. The extra \$150 of the loan principal in the promissory note was for a processing fee.

<sup>3</sup> The Assignment bears a pre-printed date of January 29, the date Bond generated the loan documents and the date that Perry met with Bond to sign them. It bears Perry's signature below the CD owner's signature, which Trustmark obscured.

1 individual whose signature is requested, where the individual has committed to sign the  
2 paperwork, and where there is no reason to believe that the paperwork will not be signed.

3 **B. MC Inaccurately Discloses the Trustmark Loan**

4 On April 15, 2014, MC filed its first quarterly report disclosing the Trustmark loan,  
5 which contained a number of errors and omissions. MC Apr. Quarterly Rpt. at 26. Committees  
6 must disclose details about their loans on FEC Schedule C-1 and answer certain questions about  
7 these loans. The Schedule C-1 regarding the Trustmark loan inaccurately reported that a CD had  
8 *not* been pledged as collateral for the loan, and it erroneously listed the value of the collateral for  
9 the loan as "\$0.00." *Id.* MC also reported that no other parties were secondarily liable for the  
10 loan. *Id.* The form Schedule also asked if the Committee had pledged its future receipts as  
11 collateral, and MC correctly responded "No." The Schedule also asked, "If neither of the types  
12 of collateral described above was pledged for this loan, or if the amount pledged does not equal  
13 or exceed the loan amount, state the basis upon which this loan was made and the basis on which  
14 it assures repayment." MC did not answer this question, nor did it attach the loan agreement, as  
15 the Schedule directs.

16 The Schedule C-1 includes both Perry's electronic signature as MC's treasurer as well as  
17 what purports to be Walker's electronically-signed certification, on behalf of Trustmark, that the  
18 disclosures on the Schedule were accurate, Trustmark was aware that loans had to be made on a  
19 basis that assures repayment, and the loan complied with the requirements set forth at 11 C.F.R.  
20 §§ 100.82 and 100.142.<sup>4</sup>

<sup>4</sup> This Schedule C-1, bearing what purports to be Walker's electronic signature and filed by MC with its original April Quarterly Report, is dated January 29, 2014 – the date that Trustmark disbursed the loan funds to MC. *Id.* About two weeks later, MC submitted, as part of a Miscellaneous Report, the original Schedule C-1 hand-signed by Walker, which was also dated January 29. *See* MC Miscellaneous Rpt. at 1 (Apr. 30, 2014). But in his sworn affidavit, Walker avers that he was not given the C-1 to sign until April 15. Walker Aff. ¶ 16.

1 MC filed an April 30, 2014, Miscellaneous Report that attached some of the loan  
2 documents: the Promissory Note, the Board Resolution, and the Errors and Omissions  
3 Agreement. MC did not, however, attach the Assignment, the document indicating that it did not  
4 own the pledged CD. Although the Promissory Note states that the collateral for the loan was  
5 "certificates of deposit described in an Assignment of Deposit Account dated January 29, 2014,"  
6 the documents MC disclosed do not indicate that a third party owned the CD, and MC's  
7 Schedule C-1 erroneously states that there was *no* collateral and no secondarily liable party.  
8 Trustmark certified these inaccurate representations as true.

9 On May 12, 2014, MC filed an amended April Quarterly Report, which repeated the  
10 misstatements that a CD had not been pledged as collateral, the value of the collateral was \$0.00,  
11 Trustmark did not have a secured interest in the collateral, and there were no secondarily liable  
12 parties. MC continued to leave blank the space provided to explain how the loan's repayment  
13 was assured if the loan was not secured by collateral or future receipts. MC Amended Apr.  
14 Quarterly Rpt. at 26 (May 12, 2014). It also continued to represent that Trustmark had certified  
15 the accuracy of the information on the form and the loan's compliance with the Commission's  
16 regulations. *Id.*

17 On May 15, 2014, the Complainant filed the original Complaint, which relied on the  
18 Schedule C-1 in MC's April Quarterly Report stating that there was no collateral for the loan.  
19 The Complaint alleged that Walker consented to Trustmark making a contribution to MC  
20 because Trustmark's loan to MC violated the Commission's regulations at 11 C.F.R. § 100.82,  
21 which require a lender to have an assurance of repayment. Compl. at 4-7.

22 Two days later, MC filed its Second Amended April Quarterly Report on which it  
23 checked "Yes" in response to the question asking if the loan was collateralized by any one of

1 various types of security, including a certificate of deposit. MC Second Amended Apr.  
2 Quarterly Rpt. at 26 (May 17, 2014). In response to the form's direction, "If yes, specify," MC  
3 wrote "Certificate of Deposit." *Id.* But MC neither disclosed that it did not own the CD that  
4 secured the loan, nor did MC provide the loan document that showed that another party owned  
5 the CD, much less identify the owner of the CD. MC stated in response to another question on  
6 the form that Trustmark had a perfected security interest in the collateral, but it continued to state  
7 that no other party was secondarily liable for Trustmark's loan to MC.<sup>5</sup> MC Second Amended  
8 Apr. Quarterly Rpt. at 26 (May 17, 2014).

9 The Amended Complaint, filed on May 19, alleges that Trustmark violated the  
10 Commission's regulations because it lacked a perfected security interest in the CD serving as  
11 collateral for the loan. *Id.* at 5.

12 MC repaid the loan by May 30, 2014, a few days short of its June 3 maturity date. To  
13 date, MC and has not identified the owner of the pledged CD.

### 14 **III. ANALYSIS**

#### 15 **A. Trustmark's Loan Was Not a Contribution to MC Because it was Fully** 16 **Secured**

17 The Amended Complaint alleges that Trustmark made a prohibited contribution to MC  
18 by loaning it \$250,150 without having a perfected security interest in the CD later pledged as  
19 collateral. Amend. Compl. at 5. The Complaint further alleges that Walker, as a bank officer  
20 approving a loan that was a prohibited contribution, violated 52 U.S.C. § 30118 (formerly  
21 §441b). Compl. at 6; Amended Compl. at 8-9.

<sup>5</sup> This Amended Report also purported to bear Walker's electronic signature on the amended form's certification. But Walker avers that "it is my understanding that [MC] has filed multiple versions of the Schedule C-1 with the [Commission], all of which purport to include an electronic version of my signature. I was never consulted by [MC] prior to its making these additional C-1 filings." Walker Aff. ¶ 17.

1 The Act prohibits an officer of a national banks from consenting to the bank making  
2 contributions. 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)). Contributions include  
3 "loans" or "anything of value" made for the purpose of influencing an election, 52 U.S.C. §  
4 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)), but do not include bank loans made in the  
5 ordinary course of business "on a basis which assures repayment," that are "evidenced by a  
6 written instrument and subject to a due date or amortization schedule," and which are made at a  
7 usual and customary interest rate for the lender for the category of loan involved. 52 U.S.C. §  
8 30101(8)(B)(vii) (formerly 2 U.S.C. § 431(8)(B)(vii)); *see also* 11 C.F.R. § 100.82(a) (a bank  
9 loan is not a contribution if it has those characteristics). The record establishes that the loan was  
10 made through a written instrument with a due date. Further, there is no allegation or information  
11 in the record suggesting that the interest rate (2.86%) on the loan was not Trustmark's usual and  
12 customary rate applicable to a loan backed by collateral on deposit equal in value to the loan.

13 The Complaint alleges, however, that Trustmark's loan to MC was not made on a basis  
14 that assures repayment because there was no collateral for the loan, Compl. at 6, or, alternatively,  
15 Trustmark did not have a perfected security interest in the loan. Amended Compl. at 4-5. For a  
16 loan to be considered "made on a basis that assures repayment," the Commission's regulations  
17 require that the lender (a) "has perfected a security interest in collateral *owned by the candidate*  
18 *or political committee receiving the loan*"; (b) that "the fair market value of the collateral is  
19 equal to or greater than the loan amount and any senior liens as determined on the date of the  
20 loan"; and (c) "the political committee provides *documentation* to show that the lending  
21 institution has a perfected security interest in the collateral." 11 C.F.R. § 100.82(e)(1)(i)  
22 (emphasis added).



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1 The transaction between Trustmark and MC clearly did not meet the section  
2 100.82(e)(1)(i)(a) criterion because MC did not own the collateral for the loan.<sup>6</sup> If, as in this  
3 matter, a loan does not meet the requirements in 100.82(e), "the Commission will consider the  
4 totality of the circumstances on a case-by-case basis in determining whether a loan was made on  
5 a basis that assures repayment." 11 C.F.R. § 100.82(e)(3).<sup>7</sup> In past matters, the Commission has  
6 concluded that a bank loan did not constitute a prohibited contribution under the totality of the  
7 circumstances when the bank made the loan while intending that it would be assured of  
8 repayment. *See* General Counsel's Rpt. No. 2 at 3-8, MUR 5496 (Huffman) (loan that was not  
9 secured by collateral for a period of 90 days nonetheless was assured of repayment under the  
10 totality of the circumstances because the bank intended that repayment be assured where, *inter*  
11 *alia*, the candidate verbally pledged to use retirement savings to repay the loan); First General  
12 Counsel's Rpt. at 5-10, MUR 5262 (Second National Bank) (under the totality of the  
13 circumstances, bank intended to assure repayment of the loan and therefore did not make a  
14 prohibited contribution where it required a cosigner, and the cosigner had a suitable credit  
15 history and relationship with the bank).

16 The available information indicates that Trustmark was assured of repayment when it  
17 made the loan to MC. Trustmark prepared the Assignment at the same time that it prepared the

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<sup>6</sup> Further, it is questionable whether the loan satisfied 100.82(e)(1)(i)(c) because Trustmark did not receive the signed documentation pledging the CD as collateral for the loan until seven days after it disbursed the loan funds to MC. Trustmark instead relied on a *verbal* pledge from the CD's owner to provide collateral for the loan until the bank received the Assignment, which one of Trustmark's affiants asserted was not unusual. (Upon its later receipt of the Assignment, Trustmark obtained a perfected security interest under Mississippi law in the CD because it was both pledged as collateral and on deposit with Trustmark. *See* Miss. Code Ann. 75-9-314.)

<sup>7</sup> *See also* Factual and Legal Analysis at 2-7, MUR 5766 (Amalgamated Bank) (Commission took no further action after investigation revealed that bank loan that failed to meet regulation's requirements was nevertheless made on a basis assuring repayment under the totality of the circumstances); General Counsel's Rpt. No. 2 at 4-10, MUR 5685 (BancorpSouth Bank) (same); General Counsel's Rpt. No. 4 at 10-16, MUR 5652 (First Bank) (same); First General Counsel's Report at 20-25, MUR 5381 (Bishop) (bank assured of repayment for candidate's line of credit under the totality of the circumstances).

1 remainder of the loan documents, obtained a verbal pledge that a CD on deposit with Trustmark  
2 worth approximately the same as the loan principal would serve as the loan's collateral, and  
3 received the executed Assignment from the CD's owner one week after the loan was made. The  
4 Commission therefore finds no reason to believe that Walker violated Section 30118(a)  
5 (formerly 441b(a)).

6 **B. Trustmark and Walker's Inaccurate Schedule C-1 Certifications are not**  
7 **Independent Violations of the Act**

8 Complainant also alleges that Walker violated the Act's disclosure requirements because  
9 he certified MC's inaccurate statements about the loan on the original Schedule C-1. Amended  
10 Compl. at 7, 9. There is no dispute that the bank's certification was inaccurate, but neither the  
11 Act nor the regulations attaches liability to the bank officer certifying the false statements.  
12 Instead, the party filing the relevant report is responsible for its accuracy.

13 The Commission's regulations at 11 C.F.R. § 104.3(d)(1)(v) require committees  
14 borrowing funds to submit a certification from the lending institution that (1) the borrower's  
15 statements on the Schedule C-1 are accurate, to the best of the lender's knowledge; (2) the loan or  
16 line of credit was made or established on terms and conditions no more favorable at the time than  
17 those imposed for similar credit granted to borrowers of comparable credit worthiness, and  
18 (3) the institution is aware of the requirement for terms which assure repayment and the bank has  
19 complied with 11 C.F.R. § 100.82 and 100.142.<sup>8</sup> See 11 C.F.R. § 104.3(d)(1)(v); AO 1994-26  
20 at 4 (Scott Douglass Cunningham Campaign Committee). As the Commission explained when it

<sup>8</sup> Schedule C-1 accordingly states that by signing the form, the lending institution is certifying that "To the best of this institution's knowledge, the terms of the loan and other information regarding the extension of the loan are accurate as stated" on the form, the loan was made on terms "no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness," and that "This institution is aware of the requirement that a loan must be made on a basis which assures repayment, and [the lender] has complied with the requirements set forth at 11 CFR 100.82 and 100.142 in making this loan."

1 promulgated these regulations, in addition to helping banks avoid making prohibited  
2 contributions, these lender certifications serve an important and public role by ensuring the  
3 reliability of committee loan disclosures based on information exclusively in the possession of  
4 the banks. *See Loans from Lending Institutions to Candidates and Political Committees*, 56 Fed.  
5 Reg. 67,118, 67,122. (Dec. 27, 1991) ("Explanation and Justification").

6 Walker acknowledges that some of Walker's certifications were inaccurate. Walker  
7 Resp. at 3. He argues that he is not liable for the errors in the Schedule C-1 and that they were  
8 *de minimis*. Walker Resp. at 9-12.

9 Nevertheless, a false or inaccurate certification, standing alone, is not a violation by the  
10 *officer of a lender* of a duty imposed by the Act or Commission regulations. The Commission's  
11 regulations, rather, impose a duty *on committees* to file accurate Schedule C-1s with properly  
12 reviewed lender's certifications. Accordingly, the Commission finds that there is no reason to  
13 believe that Walker violated the Act or Commission regulations when Walker certified the  
14 inaccurate Schedule C-1.

#### 15 IV. CONCLUSION

16 Therefore, there is no reason to believe that Harry M. Walker consented to making a  
17 prohibited national bank contribution to MC in violation of 52 U.S.C. § 30118 (formerly 2  
18 U.S.C. § 441b), or that Walker violated the Act or the Commission's regulations when he  
19 certified MC's inaccurate disclosures regarding Trustmark's loan to MC.